

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

**Richard W. DeOtte**, et al.,

Plaintiffs,

v.

**Alex M. Azar II**, et al.,

Defendants.

Case No. 4:18-cv-825-O

**UNOPPOSED MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff Braidwood Management Inc. respectfully moves for a temporary restraining order against the enforcement of the Contraceptive Mandate, codified at 42 U.S.C. § 300gg-13(a)(4), 45 C.F.R. § 147.130(a)(1)(iv), 29 C.F.R. § 2590.715-2713(a)(1)(iv), and 26 C.F.R. § 54.9815-2713(a)(1)(iv), and against the enforcement of 26 U.S.C. § 4980D, which imposes tax penalties of \$100 per employee per day on any employer that fails to comply with the Contraceptive Mandate. The proposed TRO will apply only to Braidwood, and it will shield Braidwood from tax penalties for its decision to revoke contraceptive coverage in its self-insured health plan effective December 1, 2018. The protections conferred by this TRO will last only until the date on which this Court rules on the plaintiffs' motion for preliminary injunction. The defendants are unopposed to this motion.

The Contraceptive Mandate and 26 U.S.C. § 4980D require employers to choose from among the following three options: (1) Provide contraceptive coverage in their employees' health insurance; (2) Fill out and submit a form that leads directly to the provision of contraception by their insurer or third-party administrator; or (3) Pay a tax penalty of \$100 per employee per day. *See* 26 U.S.C. § 4980D. On November

15, 2018, the defendants issued a final rule that categorically exempts objecting employers such as Braidwood from the Contraceptive Mandate and the corresponding tax penalties. *See* Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,536 (Nov. 15, 2018). In reliance on this final rule, Braidwood terminated coverage of contraception in its self-insured health plan effective December 1, 2018. *See* Affidavit of Steven F. Hotze at ¶¶ 25–27 (attached as Exhibit 1).

On January 14, 2019, a federal district judge in Philadelphia issued a nationwide injunction that prohibits the defendants from enforcing the final rule of November 15, 2018. *See Pennsylvania v. Trump*, No. 2:17-cv-04540-WB (E.D. Pa. Jan. 14, 2019), ECF Nos. 135, 136. As a result of this nationwide injunction, Braidwood is now facing tax penalties of \$100 per employee per day for conduct that is protected by the Religious Freedom Restoration Act. *See* 26 U.S.C. § 4980D. In addition, Braidwood's tax returns for the 2018 calendar year are due on March 15, 2018, and Braidwood needs to know whether it must pay tax penalties for its refusal to provide contraceptive coverage since December 1, 2018.

Braidwood therefore requests a temporary restraining order that will shield it from tax penalties while the parties brief the motions for class certification (ECF No. 20) and preliminary injunction (ECF No. 21). The proposed order would enjoin the defendants and their successors from imposing tax penalties on Braidwood for its failure to provide or arrange for contraceptive coverage from December 1, 2018, until the date that this Court rules on the plaintiffs' motion for preliminary injunction. The order would also promise that the final judgment or consent decree entered in this case will enjoin the defendants and their successors from imposing tax penalties on Braidwood for its failure to comply with the Contraceptive Mandate during this window of time.

A proposed order is attached to this unopposed motion.

Respectfully submitted.

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Dated: February 20, 2019

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### CERTIFICATE OF CONFERENCE

I certify that I conferred with Daniel Riess, counsel for the defendants, and he informed me that the defendants are unopposed to this motion.

/s/ Jonathan F. Mitchell  
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the Proposed Classes*

### CERTIFICATE OF SERVICE

I certify that on February 20, 2019, I served this document through CM/ECF upon:

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